

FINAL

**MINUTES OF THE COTTONWOOD HEIGHTS CITY
PLANNING COMMISSION MEETING**

Wednesday, July 13, 2011

6:00 p.m.

**Cottonwood Heights City Council Room
1265 East Fort Union Boulevard, Suite 300
Cottonwood Heights, Utah**

ATTENDANCE

Planning Commission Members:

Amy Rosevear, Chair
Perry Bolyard
Paxton Guymon, Alternate
Lindsay Holt
James S. Jones
Bradley Jorgensen
Dennis Peters
Joseph L. Scott
Jennifer Shah
Gordon Walker

City Staff:

Brian Berndt, Planning Director
Morgan Brim, Associate Planner
Shane Topham, City Attorney
Brad Gilson, City Engineer
Tim Thompson, City Geologist
Kory Solorio, Deputy City Recorder

BUSINESS MEETING

1.0 WELCOME/ACKNOWLEDGEMENTS – CHAIR ROSEVEAR

Chair Rosevear called the meeting to order at 6:04 p.m.

2.0 INTRODUCTION OF NEW PLANNING COMMISSION MEMBERS

Incoming Planning Commission Members Dennis Peters and Paxton Guymon introduced themselves.

Dennis Peters gave his address as 2219 East Lorita Way and stated that he is a 19-year resident. He will be serving District 2 and is happy to be a Member of the Planning Commission.

Paxton Guymon gave his address as 7380 Silver King Circle and stated that he will serve as the Alternate Planning Commission Member.

3.0 CITIZEN COMMENTS

There were no citizen comments.

4.0 PUBLIC HEARINGS

4.1 The Planning Commission will hear public comment on a proposed amendment to Title 19 “Sensitive Lands Evaluation Development Standards (SLEDS)” ordinance by amending the review process and standards for development.

(18:06:30) Chair Rosevear opened the public hearing.

Bruce Baird, legal counsel for the Tavaci Project, distributed written comments. He stated that the ordinance is well intentioned and began with the common goal of safely developing the foothills. His clients agree with that goal. Mr. Baird expressed his confidence in and respect for City Geologist, Tim Thompson, and has used his services in a number of other matters. Mr. Baird stated that although the ordinance started out being well intentioned, it has metastasized into something else.

The first problem he observed is that there is a complete lack of a connection between the problem being solved and the solution. For example, there are provisions in the ordinance that state that if someone owns property in an avalanche zone, even if they later prove they are not in the zone, they cannot build a home taller than 30 feet. He argued that the two are not related. The ordinance also requires habitat protection for property within the rock fall zone. There are, however, no standards for habitat protection. Mr. Baird pointed out that the ordinance adopts a “guilty until proven innocent” standard. For property shown on one of the general maps, the property owner is somehow presumed guilty of all offenses of the map and must prove their way out of the offenses. Once that is done a property owner is still bound by the SLEDS ordinance. Mr. Baird also observed that the ordinance has a significant number of vagueness problems. He specifically referred to the standard for “natural beauty” and characterized it as subjective. Next, he commented that there are a significant number of standard list allegations. He explained that the DRC has the authority to do certain things but there are no standards specifying how.

Mr. Baird also observed that there are a vast number of inconsistencies in the ordinance. For example, the ordinance states that lot coverage should be minimized. The best way to do that is to build taller structures, however, that is prohibited by the ordinance. Because both cannot be done, Mr. Baird concluded that the ordinance is internally inconsistent. Last, Mr. Baird stated that the ordinance consists of a number of provisions that are an unconstitutional taking under federal and state constitutional law. There are requirements for publicly dedicated trail access and publicly improved trail access. While it may be a worthwhile goal, Mr. Baird stated that it has already been held by the United States Supreme Court under the circumstances set out in the ordinance to be an unconstitutional taking.

(18:11:38) Given the vast number of issues, Mr. Baird felt the City would be making a serious mistake to recommend adoption of the ordinance. It was his opinion that it needs a dramatic reworking and as written is illegal, unconstitutional, and will result in nothing but a waste of the City’s money and time while it is challenged. He recommended it be rewritten and a number of points reconsidered. Mr. Baird recommended the Commission postpone action on the above item until at least the next meeting.

There were no further public comments. The public hearing was to remain open until midnight to allow additional written and public comments.

Mr. Baird pointed out that the maps, which are an integral part of the ordinance, were not available on the City's website. For that and other reasons, he considered the technical notice of the hearing to be deficient. He explained that the maps have a specific impact on individual properties and without them being available, property owners do not know if their property is impacted. He also thought the notice should have been sent as a matter of due process, directly to all impacted owners because the maps are vague and general.

Associate Planner, Morgan Brim, confirmed that the City met all noticing requirements. City Attorney, Shane Topham, agreed and stated that all statutory noticing requirements were fulfilled. It was noted that by keeping the public hearing open the Commission is precluded from voting on the matter this evening.

(18:15:30) Commissioner Walker moved that the Commission postpone a vote on the matter this evening and allow the public comment period to extend through midnight tonight. Commissioner Jorgensen seconded the motion.

It was determined that there were additional public comments to be heard.

Commissioner Walker withdrew his motion.

(18:16:38) Doug Shelby from Walker Development, expressed concern about the proposed SLEDs ordinance. His opinion was that proper noticing of tonight's meeting was not provided. He noted that the ordinance consists primarily of their 300 plus acres. Many believe their property is an extension of FCOZ. Much of the property near the Old Mill, however, was never in FCOZ and is in Sensitive Lands. As written, their use will be dramatically reduced and they will ask for compensation. He suggested the City notice all property owners who will be affected. He considered the ordinance to have a much greater impact than a zoning ordinance and changes the entire structure of what they can do with their property. Mr. Shelby wished the matter had been handled differently, however, to his knowledge none of the landowners were involved.

Chair Rosevear pointed out that the matter has been through the public hearing process before and has gone back to the City Council. Mr. Shelby claimed that proper notice was not provided previously either. He stressed the magnitude of what is being proposed. He did not support or agree with what has been put forward and wished the entire ordinance would be thrown out. He predicted endless litigation if what is proposed is adopted. He suggested instead that everything be contained in the zone and attempts made later to determine who has jurisdiction.

Mr. Shelby felt the property owners have been short changed as far as their ability to give input. He recommended the public hearing remain open to allow him to comment further. Chair Rosevear stated that numerous presentations have been made on the ordinance. She asked Mr. Shelby to review the ordinance and submit specific comments. Mr. Shelby wanted to get input from staff about why the ordinance was written the way it was. Chair Rosevear pointed out that this is an opportunity to make changes.

Mr. Shelby remarked that he was not notified of the SLEDs ordinance or the CRC matter, which he found disturbing. He was concerned that his company owns 3% of the City yet they aren't made aware of what is going on. He stated that his neighbors feel the same way. He wanted to

have a good relationship with the City but stated that if things go sour the situation could be bad. Chair Rosevear stated that the City does what is required by the state with respect to noticing. Staff was happy to notice Mr. Shelby on other matters if so desired. Mr. Shelby claimed that he was never properly noticed and remarked that there are numerous other landowners in Cottonwood Heights who would have liked to have been present tonight. They are concerned about additional restrictions that the proposed SLEDs ordinance will put on their property. Chair Rosevear explained that the uses are the same but the ordinance serves as an overlay that requires more stringent restrictions to be adhered to.

(18:24:12) Mr. Brim reviewed the noticing requirements and stated that for an ordinance amendment, affected entities are noticed. They include adjacent cities, newspapers, and government agencies. Notice is also posted on the City's website. Noticing for ordinance amendments and text amendments is not site specific. Mr. Baird disagreed with Mr. Brim's analysis since what is before the Commission does not involve only the adoption of a zone but rather the application of the zone to the maps, which requires an individual notice to every property owner. Commissioner Walker stated that given the fact that the Commission received information prior to tonight's meeting, it would be difficult for the City's legal counsel to review the potential comments received. Commissioner Walker recommended that Mr. Shelby be given at least 10 days to respond in writing with his concerns. This would preclude the Commission from taking action until at least the next scheduled meeting.

(18:26:30) Commissioner Walker moved to extend the public comment period until July 27, 2011 and postpone action on the SLEDs Ordinance recommendation. Commissioner Jorgensen seconded the motion.

Chair Rosevear thanked those present in the audience and recognized the importance of the questions raised. She suggested each Commission Member answer the questions posed without feeling the threat of litigation. Mr. Baird was asked to provide his comments in PDF format to the Commission. Because the next public meeting was scheduled for August 3, it was recommended that the motion be delayed until that date with a decision scheduled for the September Planning Commission Meeting. Chair Rosevear suggested the motion remain as stated since the Commission has the option of tabling the matter further if more comments are received than can be reviewed in the specified period of time.

Vote on motion: Joseph L. Scott-Aye, Bradley Jorgensen-Aye, Gordon Walker-Aye, Perry Bolyard-Aye, Jennifer Shah-Aye, Lindsay Holt-Aye, Amy Rosevear-Aye. The motion passed unanimously. James S. Jones, Dennis Peters, and Paxton Guymon did not participate in the vote.

Commissioner Holt asked Mr. Brim to post the Power Point presentation he made previously to the City's website. She thought it would be helpful for the general public to be able to view it. It was also recommended that the applicable maps be made readily available at the front counter. Mr. Brim stated that the maps are in PDF format and can be downloaded directly to the website. They are also readily available in the City offices. It was noted that *The Cottonwood Heights Journal* includes detailed information on matters being reviewed by the Planning Commission. The SLEDs ordinance was mentioned specifically in the publication as well.

5.0 ACTION ITEMS

5.1 The Planning Commission will take action on a proposed amendment to Title 19 “Sensitive Lands Evaluation Development Standards (SLEDS)” ordinance by amending the review process and standards for development.

The above matter was tabled per the previous motion.

5.2 The Planning Commission will take action to elect a new Chair and Vice Chair.

(18:32:20) The Commission Members were asked to submit written nominations for Chair and Vice Chair. It was reported that during the past year, Amy Rosevear served as Chair and Perry Bolyard served as Vice Chair. Commissioner Bolyard was interested and willing to serve in either capacity. Commissioner Jorgensen indicated that he was not interested in serving as Chair or Vice Chair due to his travel schedule. Commissioner ____ stated that he is presently renting a home in the City and was recently informed by the property owner that he would like to sell the property. There was a possibility that he would be moving out of Cottonwood Heights City and did not feel he could commit to serve in either capacity. Commissioner Walker expressed a willingness to serve as Chair or Vice Chair. Commissioners Shah and Holt also indicated that they would not be interested in serving as Chair or Vice Chair.

(18:36:59) Mr. Brim stated that every five years the City is asked to update the General Plan. An email was sent to each Commission Member containing a series of questions. He asked that the questions be answered and that the Commissioners be prepared to discuss them at the next meeting during the work session. It was noted that General Plan updates often take time and the intent is to begin the process. Planning Director, Brian Berndt, remarked that the intent is to assess what changes are needed. The survey questions are meant to provide an analysis of what has been successful, what needs to be changed, and feedback in general on how well the Commission thinks the plan has worked. Other items need to be incorporated into the plan such as findings from the Economic Study currently being prepared.

Perry Bolyard was nominated to serve as Chair with Gordon Walker being nominated to serve as Vice Chair. Both men accepted the appointments.

(18:41:05) Commissioner Shah moved to nominate Perry Bolyard as Chair of the Cottonwood Heights Planning Commission. Commissioner Holt seconded the motion. Vote on motion: Joseph L. Scott-Aye, Bradley Jorgensen-Aye, Gordon Walker-Aye, Perry Bolyard-Aye, Jennifer Shah-Aye, Lindsay Holt-Aye, Amy Rosevear-Abstained. The motion passed unanimously with one abstention. James S. Jones, Dennis Peters, and Paxton Guymon did not participate in the vote.

(18:41:51) Commissioner Jorgensen moved to nominate Gordon Walker as Vice Chair. Commissioner Scott seconded the motion. Vote on motion: Joseph L. Scott-Aye, Bradley Jorgensen-Aye, Gordon Walker-Aye, Perry Bolyard-Aye, Jennifer Shah-Aye, Lindsay Holt-Aye. The motion passed unanimously. Amy Rosevear, James S. Jones, Dennis Peters, and Paxton Guymon did not participate in the vote.

5.3 The Planning Commission will take action and approve meeting minutes from April 6, 2011.

(18:42:25) Some Members of the Planning Commission did not receive a copy of the minutes. Mr. Brim stated that they were emailed out and he also had additional copies available for review. The minutes were reviewed and modified.

(18:43:47) *Commission Walker moved to approve the minutes of April 6, 2011, as corrected. Commission Holt seconded the motion. Vote on motion: Joseph L. Scott-Aye, Bradley Jorgensen-Aye, Gordon Walker-Aye, Perry Bolyard-Aye, Jennifer Shah-Aye, Lindsay Holt-Aye. The motion passed unanimously. Amy Rosevear, James S. Jones, Dennis Peters, and Paxton Guymon did not participate in the vote.*

Gratitude was expressed to Chair Rosevear for her service on the Commission and staff and her fellow Planning Commissioners wished her well in her future endeavors.

6.0 ADJOURNMENT

(18:45:00) *Commissioner Shah moved to adjourn. Commissioner Holt seconded the motion. seconded the motion. Vote on motion: Joseph L. Scott-Aye, Bradley Jorgensen-Aye, Gordon Walker-Aye, Perry Bolyard-Aye, Jennifer Shah-Aye, Lindsay Holt-Aye. The motion passed unanimously. Amy Rosevear, James S. Jones, Dennis Peters, and Paxton Guymon did not participate in the vote.*

The meeting adjourned at 6:45 p.m.

I hereby certify that the foregoing represents a true, accurate and complete record of the Cottonwood Heights City Planning Commission Meeting held Wednesday, July 13, 2011.

A handwritten signature in cursive script, reading "Teri Forbes". The signature is written in dark ink and is positioned above a horizontal line.

Teri Forbes
T Forbes Group
Minutes Secretary

Minutes approved: